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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 DEARICA HAMBY, an Individual,

11 v. Plaintiff,

12 WNBA, LLC and LAS VEGAS
 13 BASKETBALL L.P. d/b/a LAS VEGAS
 ACES,

14 Defendants.

Case No.: 2:24-cv-01474-APG-DJA

15 **DEFENDANT LAS VEGAS
 BASKETBALL L.P.'S OPPOSITION
 TO MOTION FOR LEAVE TO FILE
 BRIEF AS AMICI CURIAE**

16 Defendant, LAS VEGAS BASKETBALL L.P. d/b/a LAS VEGAS ACES (“LV Aces”
 17 or “Defendant”), by and through its undersigned counsel of record, the law firm of Holland &
 18 Hart LLP, hereby submits its Opposition to Proposed amici curiae Public Justice, A Better
 19 Balance, and the National Employment Law’s (together, “Movants”) Motion for Leave to File
 20 Brief as Amici Curiae (the “Motion”).

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. INTRODUCTION**

23 Movants wish to file an amicus brief, despite the fact that this case is currently at the
 24 motion to dismiss stage. The proposed brief is unnecessary and improper, and does not meet the
 25 applicable standard. While the Court has discretion to grant or decline a prospective amicus
 26 participation, an amicus brief should only be allowed if (1) the party lacks competent
 27 representation, (2) the *amicus* has an interest in another case that may be affected, or (3) the brief
 28 presents unique information. None of this is true here.

1 Instead, Movants' brief is simply an extension of Plaintiff Dearica Hamby's ("Hamby")
 2 Opposition to WNBA, LLC's Motion to Dismiss, repeats legal contentions already found within
 3 Hamby's Opposition, and presents policy arguments for the joint employment doctrine as a
 4 whole—information irrelevant at this stage. Accordingly, this Court should deny Movants'
 5 Motion.

6 **II. LEGAL ARGUMENT**

7 The court has broad discretion to grant or refuse a prospective amicus participation.
 8 *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), abrogated on other grounds by *Sandin v. Conner*, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995). In deciding whether to grant
 10 leave to file an amicus brief, courts consider whether the briefing "supplement[s] the efforts of
 11 counsel, and draw[s] the court's attention to law that escaped consideration." *Miller-Wohl Co., Inc. v. Comm'r of Labor & Indus. Mont.*, 694 F.2d 203, 204 (9th Cir. 1982). Movants' brief does
 13 neither.

14 Preliminarily, the filing of amicus curiae briefs at the motion to dismiss stage of a district
 15 court action is inappropriate. *See Cody v. Movado Grp., Inc.*, No. 3:23-cv-00015-H-KSC, 2023
 16 U.S. Dist. LEXIS 25249, at *2 (S.D. Cal. Feb. 8, 2023) (discouraging the filing of amicus curiae
 17 briefs on a motion to dismiss in district court in the absence of unique legal arguments). The
 18 question before the Court is whether the complaint contains "enough facts to state a claim to
 19 relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct.
 20 1955, 167 L. Ed. 2d 929 (2007). Movants insist that their amicus brief is proper because it
 21 provides background demonstrating the protections granted by the joint employment doctrine.
 22 Motion at 2-3. But the Court is not adjudicating the case based on the merits, nor is it weighing
 23 in on the importance of the joint employment doctrine. Movants present no unique legal
 24 arguments. Rather, the proposed brief is simply a recitation of arguments Hamby has already
 25 sufficiently addressed in opposing the WNBA's motion to dismiss.

26 Next, Movants do not meet the standard for filing an amicus brief. "An amicus brief
 27 should be permitted on behalf of a party lacking competent representation, when the *amicus* has
 28 an interest in some other case that may be affected by a decision in the present case, or when the

1 *amicus* has unique information that could help this court beyond the assistance already provided
2 by the parties' lawyers." *United States v. Paredes-Medina*, No. 2:21-cr-00323-CDS-DJA, 2022
3 U.S. Dist. LEXIS 187237, at *3 (D. Nev. Oct. 13, 2022). Here, Movants' state that their brief
4 would "explain the context, and broader stakes, of the WNBA's argument that it was not Ms.
5 Hamby's employer." Mot. at 2:23-24. However, Movants present no facts demonstrating
6 Hamby's counsel cannot competently address these issues. Movants also do not identify an
7 interest they have in some other case that may be affected by a decision in this case. Next,
8 Movants' expressed justification for the proposed *amicus* brief does not constitute "unique
9 information" that would assist the Court beyond the briefing already submitted by the parties.
10 Hamby's Opposition to the WNBA's Motion to Dismiss already addresses the alleged
11 sufficiency of her pleadings—the only question before this Court at this stage. Thus, the Court
12 should deny the Motion.

13 Finally, Movants brief is an improper attempt to bolster Plaintiff's Opposition, present
14 arguments outside of the pleadings, and extend her brief beyond the page limitations. *See Beesley*
15 *v. Int'l Paper Co.*, No. 06-703-DRH, 2011 U.S. Dist. LEXIS 132578, at *4-5 (S.D. Ill. Nov. 17,
16 2011) ("The Court finds that complementing defendants' arguments is not sufficient reason to
17 allow an *amicus* brief. While at times this case and Spano have been treated as companion cases,
18 Boeing has failed to convince this Court that its attempt to file an *amicus* brief is nothing more
19 than an attempt for the defendants to get another bite at the apple, one of the policies behind
20 denying a party's brief."); *see also Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997) ("The
21 vast majority of *amicus* briefs are filed by allies of litigants and duplicate the arguments made in
22 the litigants' briefs, in effect merely extending the length of the litigant's brief. Such *amicus*
23 briefs should not be allowed. They are an abuse."). Movants' brief merely acts as an extension
24 of Hamby's Opposition brief because it advocates for positions asserted by Hamby and appears
25 to be a divide-and-conquer effort wherein Movants raise policy issues outside the pleadings and
26 unnecessary on a motion to dismiss. This is not the purpose of an *amicus* brief. *See Ciba-Geigy*
27 *Ltd. v. Fish Peddler*, 683 So. 2d 522 (Fla. Dist. Ct. App. 1996) ("In the present case one of the
28

1 amicus briefs appears to be nothing more than an attempt to present a fact-specific argument of
2 the same type as is contained in the appellants' 50-page brief.").

3 **III. CONCLUSION**

4 For the foregoing reasons, this Court should deny Movants' Motion.

5 DATED this 6th day of November 2024.

6 **HOLLAND & HART LLP**

7 */s/ Greg S. Gilbert* _____

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of November, 2024, a true and correct copy of the foregoing **DEFENDANT LAS VEGAS BASKETBALL L.P.'S OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE** was served by the following method(s):

Electronic: by submitting electronically for filing and/or service with the United States District Court, District of Nevada's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

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